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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,155	05/04/2007	Claus Pedersen	P3480US00	6810
11764 7590 04/10/2012 Ditthavong Mori & Steiner, P.C. 918 Prince Street Alexandria, VA 22314				
EXAMINER				
LEE, CHUN KUAN				
ART UNIT		PAPER NUMBER		
2181				
NOTIFICATION DATE		DELIVERY MODE		
04/10/2012		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@dcpatent.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/589,155 Examiner Chun-Kuan Lee	Applicant(s) PEDERSEN ET AL. Art Unit 2181
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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires _____ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because:

a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

b) ☐ They raise the issue of new matter (see NOTE below);

c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): (a) ☐ will not be entered, or (b) ☐ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or applicant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see Continuation Sheet below.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

STATUS OF CLAIMS

14. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,3-10,12-16,41 and 45-49.

Claim(s) withdrawn from consideration: 17-28,34-40,43 and 44.

/Chun-Kuan Lee/ Primary Examiner, Art Unit 2181	
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In response to applicant's arguments with regard to the independent claims 1, 41 and 49 rejected under 35 U.S.C. 103(a) that the combination of the references does not teach/suggest the claimed features:

- "receiving at an electronic device an executable command specifying execution of an unidentified executable on first data without specifying which executable should be used for the first data" (claim 1);
- "receiving an executable command specifying execution of an unidentified executable on first data without specifying which executable should be used for the first data" (claim 41); and
- "receive an executable command specifying execution of an unidentified executable on first data without specifying which executable should be used for the first data" (claim 49);

because Szeto's citation of Fig. 12A, col. 1, lines 55-58, col. 7, lines 48-53, and col. 12, line 66 to col. 13, line 16 does specify "which executable should be used for the first data"; therefore, it is clear that the IM message (command) in Szeto does specify which executable should be used (the supporting application);

additionally, the Examiner asserted that, when interpreted in light of the present specification, and the Examiner's best understanding, the unidentified executable is to be identified via the metadata of the first data is not entirely wrong (at page 3 of the Final Office Action of February 7, 2012), since the metadata of the first data is employed in determining the identity of the unidentified executable; rather, there are intermediate steps that the Examiner does not appear to be taking into account; and using independent claim 1 as exemplary:

- first there is a receipt of an executable command; this executable command specifies execution of an executable, as yet unidentified, on first data without specifying which executable should be used for the first data; thus, at this point, there is a command that an executable should be executed on first data, but we do not, as yet, know the identity of the executable;
- next, a determination of content type of the first data is made, employing metadata of the first data to make this determination;
- then, using the content type previously determined from the metadata of the first data, an executable using the content type is identified;
- finally, the first data is operated on using the executable identified in the previous step; applicant's arguments have fully been considered, but are not found to be persuasive.

The examiner respectfully disagrees, and to further clarify the examiner's position, in association with the applicant's clarification of claim 1 above:

Szeto teaches/suggests the use of two executables:

- Instant Message (IM) program/executable
- supporting application/executable

for the processing of two data:

- IM message data (to be processed by the IM program/executable)
- data to be processed by the supporting application/executable;

wherein Szeto teaches/suggests that first there is a receipt of command associated with IM message data for processing the IM message data, wherein the IM message data includes the data to be processed by the supporting application, wherein the IM program/executable processes the IM message data; wherein the data to be processed by the supporting application is not yet identified; thus, at this point, there is indication that supporting application/executable should be executed on the data to be processed by the supporting application, but we do not, as yet, know the identity of the supporting application/executable. Next, a determination of content type of the data to be processed by the supporting application is made in association with employing identifier of the data to be processed by the supporting application. Then, using the content type previously determined of the data to be processed by the supporting application, the supporting application is identified. Finally, the data to be processed by the supporting application is operated on using the supporting application identified in the previous step; therefore, Szeto does teach/suggest not specifying "which executable should be used for the first data." And by combining Szeto's with Rao and Sync, the resulting combination of the references does teach/suggest applicant's claimed features.

In response to applicant's argument that Szeto is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, in association with the examiner's above analysis of Szeto, Szeto is reasonably pertinent to the particular problem with which the applicant was concerned because Szeto teaches/suggests how to execute an executable on an electronic device without identifying the executable, and Szeto's utilization of XML protocol for the IM environment can be adapted easily to the SyncML standard (Rao, col. 6, ll. 49-61).

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, the motivations is to have a reliable system and method for a user to execute and control application (Szeto, col. 2, ll. 30-33).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).